

**§ 8103. Authority to construct and alter, and to acquire sites for, medical facilities**

(a) Subject to section 8104 of this title, the Secretary—

(1) may construct or alter any medical facility and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility (including the site of such facility) that the Secretary considers necessary for use as a medical facility; and

(3) in order to assure compliance with section 8110(a)(2) of this title, in the case of any outpatient medical facility for which it is proposed to lease space and for which a qualified lessor and an appropriate leasing arrangement are available, shall execute a lease for such facility within 12 months after funds are made available for such purpose.

(b) Whenever the Secretary considers it to be in the interest of the United States to construct a new medical facility to replace an existing medical facility, the Secretary (1) may demolish the existing facility and use the site on which it is located for the site of the new medical facility, or (2) if in the judgment of the Secretary it is more advantageous to construct such medical facility on a different site in the same locality, may exchange such existing facility and the site of such existing facility for the different site.

(c) Whenever the Secretary determines that any site acquired for the construction of a medical facility is not suitable for that purpose, the Secretary may exchange such site for another site to be used for that purpose or may sell such site.

(d)(1) The Secretary may provide for the acquisition of not more than three facilities for the provision of outpatient services or nursing home care through lease-purchase arrangements on real property under the jurisdiction of the Department of Veterans Affairs.

(2)(A) In carrying out this subsection and notwithstanding any other provision of law, the Secretary may lease, with or without compensation and for a period of not to exceed 35 years, to another party any of the real property described in paragraph (1) of this subsection.

(B) Such real property shall be used as the site of a facility referred to in paragraph (1) of this subsection—

(i) constructed and owned by the lessee of such real property; and

(ii) leased under paragraph (3)(A) of this subsection to the Department for such use and for such other activities as the Secretary determines are appropriate.

(3)(A) The Secretary may enter into a lease for the use of any facility described in paragraph (2)(B) of this subsection for not more than 35 years under such terms and conditions as may be in the best interests of the Department.

(B) Each agreement to lease a facility under subparagraph (A) of this paragraph shall include a provision that—

(i) the obligation of the United States to make payments under the agreement is sub-

ject to the availability of appropriations for that purpose; and

(ii) the ownership of such facility shall vest in the United States at the end of such lease.

(4)(A) The Secretary may sublease any space in such a facility to another party at a rate not less than—

(i) the rental rate paid by the Secretary for such space under paragraph (3) of this subsection; plus

(ii) the amount the Secretary pays for the costs of administering such facility (including operation, maintenance, utility, and rehabilitation costs) which are attributable to such space.

(B) In any such sublease, the Secretary shall include such terms relating to default and non-performance as the Secretary considers appropriate to protect the interests of the United States.

(5) The Secretary shall use the receipts of any payment for the lease of real property under paragraph (2) for the payment of the lease of a facility under paragraph (3).

(6) The authority to enter into an agreement under this subsection—

(A) shall not take effect until the Secretary has entered into agreements under section 316 of this title to carry out at least three collocations; and

(B) shall expire on October 1, 1993.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 56, §5003; amended Pub. L. 101-237, title VI, §603(b), Dec. 18, 1989, 103 Stat. 2097; renumbered §8103 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-446, title XII, §1201(d)(16), Nov. 2, 1994, 108 Stat. 4684.)

**AMENDMENTS**

1994—Subsec. (d)(6)(A). Pub. L. 103-446 substituted “section 316” for “section 230(c)”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5003 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-40, §402(d)(1), substituted “8104” for “5004” in introductory provisions and “8110(a)(2)” for “5010(a)(2)” in par. (3).

Subsecs. (b), (c). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

1989—Subsec. (d). Pub. L. 101-237 added subsec. (d).

**DEVELOPMENT OF MEDICAL-FACILITY MODULAR COMPONENTS**

Pub. L. 99-166, title III, §304, Dec. 3, 1985, 99 Stat. 956, directed Administrator of Veterans' Affairs, not later than one year after Dec. 3, 1985, to develop a modular approach to planning and design of an appropriate Veterans' Administration medical facility for furnishing of hospital care.

**§ 8104. Congressional approval of certain medical facility acquisitions**

(a)(1) The purpose of this subsection is to enable Congress to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility.

(2) No funds may be appropriated for any fiscal year, and the Secretary may not obligate or expend funds (other than for advance planning and design), for any major medical facility project or any major medical facility lease unless funds for that project or lease have been specifically authorized by law.

(3) For the purpose of this subsection:

(A) The term "major medical facility project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$10,000,000, but such term does not include an acquisition by exchange.

(B) The term "major medical facility lease" means a lease for space for use as a new medical facility at an average annual rental of more than \$1,000,000.

(b) Whenever the President or the Secretary submit to the Congress a request for the funding of a major medical facility project (as defined in subsection (a)(3)(A)) or a major medical facility lease (as defined in subsection (a)(3)(B)), the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Any such prospectus shall include the following:

(1) A detailed description of the medical facility to be constructed, altered, leased, or otherwise acquired under this subchapter, including a description of the location of such facility and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase and to the sharing of health-care resources with the Department of Defense under section 8111 of this title.

(2) An estimate of the cost to the United States of the construction, alteration, lease, or other acquisition of such facility (including site costs, if applicable).

(3) An estimate of the cost to the United States of the equipment required for the operation of such facility.

(4) Demographic data applicable to such facility, including information on projected changes in the population of veterans to be served by the facility over a five-year period and a ten-year period.

(5) Current and projected workload and utilization data regarding the facility.

(6) Current and projected operating costs of the facility, including both recurring and non-recurring costs.

(7) The priority score assigned to the project or lease under the Department's prioritization methodology and, if the project or lease is being proposed for funding before a project or lease with a higher score, a specific explanation of the factors other than the priority score that were considered and the basis on which the project or lease is proposed for funding ahead of projects or leases with higher priority scores.

(8) In the case of a prospectus proposing the construction of a new or replacement medical facility, a description of each alternative to construction of the facility that was considered.

(c) Not less than 30 days before obligating funds for a major medical facility project approved by a law described in subsection (a)(2) of this section in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent, the Secretary shall provide the committees with notice of the Secretary's intention to do so and the reasons for the specified amount being exceeded.

(d)(1) Except as provided in paragraph (2), in any case in which the Secretary proposes that funds be used for a purpose other than the purpose for which such funds were appropriated, the Secretary shall promptly notify each committee, in writing, of the particulars involved and the reasons why such funds were not used for the purpose for which appropriated.

(2)(A) In any fiscal year, unobligated amounts in the Construction, Major Projects account that are a direct result of bid savings from a major medical facility project may only be obligated for major medical facility projects authorized for that fiscal year or a previous fiscal year.

(B) Whenever the Secretary obligates amounts for a major medical facility under subparagraph (A), the Secretary shall submit to the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives notice of the following:

(i) The major medical facility project that is the source of the bid savings.

(ii) The other major medical facility project for which the amounts are being obligated.

(iii) The amounts being obligated for such other major medical facility project.

(e) The Secretary may accept gifts or donations for any of the purposes of this subchapter.

(f) The Secretary may not obligate funds in an amount in excess of \$500,000 from the Advance Planning Fund of the Department toward design or development of a major medical facility project (as defined in subsection (a)(3)(A)) until—

(1) the Secretary submits to the committees a report on the proposed obligation; and

(2) a period of 30 days has passed after the date on which the report is received by the committees.

(g) The limitation in subsection (f) does not apply to a project for which funds have been authorized by law in accordance with subsection (a)(2).

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 56, §5004; amended Pub. L. 99-166, title III, §§301, 303, Dec. 3, 1985, 99 Stat. 954, 955; Pub. L. 99-576, title II, §221(b), Oct. 28, 1986, 100 Stat. 3259; Pub. L. 100-322, title IV, §422, May 20, 1988, 102 Stat. 553; renumbered §8104 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §301(a), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-79, §3(a), Aug. 13, 1993, 107 Stat. 771; Pub. L. 104-262, title II, §§205(a), 206(a), (c), Oct. 9, 1996, 110 Stat. 3189, 3190; Pub. L. 105-368,

title VII, § 704, Nov. 11, 1998, 112 Stat. 3350; Pub. L. 108-170, title II, § 201, Dec. 6, 2003, 117 Stat. 2047; Pub. L. 108-422, title IV, § 416, Nov. 30, 2004, 118 Stat. 2393; Pub. L. 109-461, title VIII, § 812, Dec. 22, 2006, 120 Stat. 3447; Pub. L. 110-387, title VII, § 705, Oct. 10, 2008, 122 Stat. 4138; Pub. L. 111-275, title IX, § 905, Oct. 13, 2010, 124 Stat. 2895.)

#### AMENDMENTS

2010—Subsec. (d). Pub. L. 111-275 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), in any case” for “In any case”, and added par. (2).

2008—Subsec. (a)(3)(B). Pub. L. 110-387 substituted “\$1,000,000” for “\$600,000”.

2006—Subsec. (a)(3)(A). Pub. L. 109-461 substituted “\$10,000,000” for “\$7,000,000”.

2004—Subsec. (g). Pub. L. 108-422 added subsec. (g).

2003—Subsec. (a)(3)(A). Pub. L. 108-170 substituted “\$7,000,000” for “\$4,000,000”.

1998—Subsec. (a)(3)(B). Pub. L. 105-368 substituted “\$600,000” for “\$300,000”.

1996—Subsec. (a)(3)(A). Pub. L. 104-262, § 206(a), substituted “\$4,000,000” for “\$3,000,000”.

Subsec. (b). Pub. L. 104-262, § 205(a)(1), inserted introductory provisions and struck out former introductory provisions which read as follows: “In the event that the President or the Secretary proposes to the Congress the funding of any construction, alteration, lease, or other acquisition to which subsection (a) of this section is applicable, the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Such prospectus shall include—”.

Subsec. (b)(1) to (3). Pub. L. 104-262, § 205(a)(2)–(4), substituted “A detailed” for “a detailed” and “title.” for “title;” in par. (1), “An estimate” for “an estimate” and “applicable.” for “applicable; and” in par. (2), and “An estimate” for “an estimate” in par. (3).

Subsec. (b)(4) to (8). Pub. L. 104-262, § 205(a)(5), added pars. (4) to (8).

Subsec. (f). Pub. L. 104-262, § 206(c), added subsec. (f). 1993—Subsec. (a)(3)(A). Pub. L. 103-79 substituted “\$3,000,000” for “\$2,000,000”.

1992—Subsec. (a)(2). Pub. L. 102-405, § 301(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “It shall not be in order in the Senate or in the House of Representatives to consider a bill, resolution, or amendment which would make an appropriation for any fiscal year which may be expended for a major medical facility project or a major medical facility lease unless—

“(A) such bill, resolution, or amendment specifies the amount to be appropriated for that project or lease,

“(B) the project or lease has been approved in a resolution adopted by the Committee on Veterans’ Affairs of that House, and

“(C) the amount to be appropriated for that project or lease is no more than the amount specified in that resolution for that project or lease for that fiscal year.”

Subsec. (a)(3)(B). Pub. L. 102-405, § 301(a)(2), inserted “new” after “as a” and substituted “\$300,000” for “\$500,000”.

Subsec. (c). Pub. L. 102-405, § 301(a)(3), substituted “law” for “resolution” in two places.

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 5004 of this title as this section.

Subsec. (b). Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places in introductory provisions.

Subsec. (b)(1). Pub. L. 102-40, § 402(d)(1), substituted “§111” for “§011”.

Subsec. (c). Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s”.

Subsecs. (d), (e). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

1988—Subsec. (a)(2). Pub. L. 100-322, § 422(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “After the adoption by the committees during a fiscal year of resolutions with identical texts approving major medical facility projects, it shall not be in order in the House of Representatives or in the Senate to consider a bill, resolution, or amendment making an appropriation for that fiscal year or for the next fiscal year which may be expended for a major medical facility project—

“(A) if the project for which the appropriation is proposed to be made is not approved in those resolutions; or

“(B) in the event that the project is approved in the resolutions, if either—

“(i) the bill, resolution, or amendment making the appropriation does not specify—

“(I) the medical facility project for which the appropriation is proposed to be made; and

“(II) the amount proposed to be appropriated for the project; or

“(ii) the amount proposed to be appropriated for the project (when added to any amount previously appropriated for the project) exceeds the amount approved for the project.”

Subsec. (a)(3), (4). Pub. L. 100-322, § 422(b), added par. (3) and struck out former pars. (3) and (4) which read as follows:

“(3) No appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than \$500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.

“(4) For the purpose of this subsection, the term ‘major medical facility project’ means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$2,000,000. Such term does not include an acquisition by exchange.”

Subsec. (c). Pub. L. 100-322, § 422(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The estimated cost of any construction, alteration, lease, or other acquisition that is approved under this section, as set forth in the pertinent resolutions described in subsection (a) of this section, may be increased by the Administrator in the contract for such construction, alteration, lease, or other acquisition by an amount equal to the percentage increase, if any, as determined by the Administrator, in construction, alteration, lease, or other acquisition costs, as the case may be, from the date of such approval to the date of contract, but in no event may the amount of such increase exceed 10 per centum of such estimated cost.”

Subsecs. (d) to (f). Pub. L. 100-322, § 422(d), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which read as follows:

“In the case of any medical facility approved for construction, alteration, lease, or other acquisition by each committee under subsection (a) of this section for which funds have not been appropriated within one year after the date of such approval, either such committee may by resolution rescind its approval at any time thereafter before such funds are appropriated.”

1986—Subsec. (b)(1). Pub. L. 99-576 inserted “and to the sharing of health-care resources with the Department of Defense under section 5011 of this title” at end.

1985—Subsec. (a). Pub. L. 99-166, § 301, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “In order to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility—

“(1) no appropriation may be made for the construction, alteration, or acquisition (not including exchanges) of any medical facility which involves a total expenditure of more than \$2,000,000 unless each committee has first adopted a resolution approving such construction, alteration, or acquisition and setting forth the estimated cost thereof; and

“(2) no appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than \$500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.”

Subsec. (b)(1). Pub. L. 99-166, §303, inserted “and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase” after “such facility”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 205(b) of Pub. L. 104-262 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to any prospectus submitted by the Secretary of Veterans Affairs after the date of the enactment of this Act [Oct. 9, 1996].”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 206(b)(2) of Pub. L. 104-262 provided that: “The amendments made by subsection (a) of such section [meaning section 301(a) of Pub. L. 102-405, amending this section] shall apply with respect to any major medical facility project or any major medical facility lease of the Department of Veterans Affairs, regardless of when funds are first appropriated for that project or lease, except that in the case of a project for which funds were first appropriated before October 9, 1992, such amendments shall not apply with respect to amounts appropriated for that project for a fiscal year before fiscal year 1998.”

Section 301(b) of Pub. L. 102-405 provided that the amendments made by section 301(a) of Pub. L. 102-405, amending this section, were not applicable with respect to any project for which funds were appropriated before Oct. 9, 1992, prior to repeal by Pub. L. 104-262, title II, §206(b)(1), Oct. 9, 1996, 110 Stat. 3190.

### § 8105. Structural requirements

(a) Each medical facility (including each nursing home facility for which the Secretary contracts under section 1720 of this title and each State home facility constructed or altered under subchapter III of this chapter) shall be of fire, earthquake, and other natural disaster resistant construction in accordance with standards which the Secretary shall prescribe on a State or regional basis after surveying appropriate State and local laws, ordinances, and building codes and climatic and seismic conditions pertinent to each such facility. When an existing structure is acquired for use as a medical facility, it shall be altered to comply with such standards.

(b)(1) In order to carry out this section, the Secretary shall appoint an advisory committee to be known as the “Advisory Committee on Structural Safety of Department Facilities”, on which shall serve at least one architect and one structural engineer who are experts in structural resistance to fire, earthquake, and other natural disasters and who are not employees of the Federal Government.

(2) Such advisory committee shall advise the Secretary on all matters of structural safety in the construction and altering of medical facilities in accordance with the requirements of this section and shall review and make recommendations to the Secretary on the regulations prescribed under this section.

(3) The Associate Deputy Secretary, the Under Secretary for Health or the designee of the Under Secretary for Health, and the Department official charged with the responsibility for con-

struction shall be ex officio members of such advisory committee.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 57, §5005; amended Pub. L. 96-128, title V, §501(e), Nov. 28, 1979, 93 Stat. 987; renumbered §8105, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §§4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

1991—Pub. L. 102-40 renumbered section 5005 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “1720” for “620”.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

1979—Subsec. (a). Pub. L. 96-128 substituted “subchapter III of this chapter” for “section 5031 of this title”.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-128 effective Nov. 28, 1979, see section 601(b) of Pub. L. 96-128, set out as a note under section 1114 of this title.

#### TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

### § 8106. Construction contracts

(a) The Secretary may carry out any construction or alteration authorized under this subchapter by contract if the Secretary considers it to be advantageous to the United States to do so.

(b)(1) The Secretary may obtain, by contract or otherwise, the services of individuals who are architects or engineers and of architectural and engineering corporations and firms, to the extent that the Secretary may require such services for any medical facility authorized to be constructed or altered under this subchapter.

(2) No corporation, firm, or individual may be employed under the authority of paragraph (1) of this subsection on a permanent basis.

(c) Notwithstanding any other provision of this section, the Secretary shall be responsible for all construction authorized under this subchapter, including the interpretation of construction contracts, the approval of materials and workmanship supplied pursuant to a construction contract, approval of changes in the construction contract, certification of vouchers for payments due the contractor, and final settlement of the contract.